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EXAMINER

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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3625

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/606,993

Applicant(s)

ROSENTHAL, BRUCE N.

Examiner

Nicholas D. Rosen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claims 1-22 have been examined.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. If the new language in claim 1 is given its broadest reasonable interpretation, as is done in the rejection under 35 U.S.C. 103 (vide *infra*), then the instant specification supports it. However, Applicant's Remarks (the second paragraph on page 8), distinguish between having a Web site that can be accessed via the internet with a browser, and providing Internet service, stating, "a Web site is not likened to Internet service by one of skill in the art." If claim 1 be read as requiring that the service provider be an Internet service provider in the usual sense of that expression, i.e., that the service provider not only provide services via an Internet Web site, but provide the service of Internet access to its clients, then claim 1 is not supported by the specification. Nothing therein reasonably conveys that the inventor, at the time the application was filed, had possession of the claimed invention.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "small" in claim 8 is a relative term which renders the claim indefinite. The term "small" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 5, 7, 9, 13, 15, 16, 17, 18, 19, 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the anonymous article, "What's in a Name Change? OfficeTempo Becomes Semprio," hereinafter "Semprio," in view of Vigoroso ("E-commerce Tackles Direct Production") and official notice. As per claim 1, "Semprio" discloses a process of purchasing goods and services comprising: (A) organizing a set of customers desirous of purchasing at least some of the goods and services, such customers taken from tenant organizations housed in a building structure to purchase

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from a central source, said organizing including arranging for communication between the service provider and each of the set of customers by providing an internet service operated for the service provider for computer controlled electronic communication (whole article); and (B) locating at least one supplier having at least some of the goods or services (ibid.; the multiple suppliers disclosed would inherently have to have been located). Vigoroso teaches: (D) receiving orders from the customers; (E) combining the customer orders to a consolidated order for the supplier; (F) ordering the customer orders from the supplier; (G) paying the supplier for the customer orders; (whole article, especially the paragraph beginning "CC culls numerous orders"); and (I) receiving goods from the supplier; and, by implication, (J) distributing the goods to the customer(s) (whole article, especially the paragraph beginning "In addition to lower product costs"). Neither Semprio nor Vigoroso expressly discloses (H) charging the customers for their respective orders, but official notice is taken that it is well known to charge customers for their orders; as Vigoroso teaches making single payments to the suppliers, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to charge the multiple customers for their orders, for the obvious advantage of not going rapidly bankrupt.

Neither "Semprio" nor Vigoroso expressly discloses (C) transmitting the available goods or services of the supplier to the set of customers at prices set by the service provider, but official notice is taken that it is well known for middlemen to transmit available goods or services to customers at prices set by the service provider (e.g., catalogs of products available from merchants who are not the manufacturers of those

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products). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to transmit the available goods or services of the supplier to the set of customers at prices set by the service provider, for the obvious advantages of letting customers know what was available and at what prices, and setting prices at a level enabling the service provider to make a profit.

As per claim 3, neither "Semprio" nor Vigoroso expressly discloses confirming delivery to the supplier, but official notice is taken that it is well known to confirm delivery of products one has ordered, as by signing for them. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to confirm delivery to the supplier, for the obvious advantage of assuring the supplier of a record of delivery, should any question or dispute arise regarding the products.

As per claim 4, neither "Semprio" nor Vigoroso expressly discloses that step (J) includes confirming delivery to the customer, but official notice is taken that it is well known to confirm delivery to a customer who receives a product (e.g., "Would you sign for this, please?"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to confirm delivery to the customer, for the obvious advantage of obtaining a record of delivery, should any question or dispute arise regarding the products.

As per claim 5, "Semprio" discloses multiple suppliers (paragraph beginning, "Customers can buy goods and services"). Vigoroso teaches multiple suppliers, combining customer orders to consolidated orders for the multiple suppliers, ordering

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the customer orders from the suppliers, and paying the suppliers (whole article, especially the paragraph beginning "CC culls numerous orders"), and receiving goods from the suppliers (whole article, especially the paragraph beginning "In addition to lower product costs"). Hence, it would have been obvious to do all these for multiple suppliers, for the obvious advantage of bulk buying of various products and services desired by customers.

As per claim 7, "Semprio" does not disclose the step of producing a catalog of available goods and services and transmitting the available goods and services in the catalog to the set of customers at prices set by the service provider, but official notice is taken that it is well known produce catalogs of goods and/or services, and transmit them online. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to produce such a catalog and transmit the available goods or services of the supplier to the set of customers at prices set by the service provider, for the obvious advantages of letting customers know what was available and at what prices, and setting prices at a level enabling the service provider to make a profit.

As per claim 9, "Semprio" discloses a "purchasing site" and "web site" (paragraphs beginning "Customers can buy goods and services" and "Along with price discounts," respectively). Because the Web is part of the Internet, the electronic communication is therefore by Internet service.

As per claim 13, "Semprio" discloses that the customers are various "businesses" and "companies" (paragraph beginning, "Backed by GEN3 Partners"). Official notice is

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taken that "businesses" and "companies" are very often corporations; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the customers to be various corporations, for the obvious advantage of profiting from sales to businesses organized according to a very common form of business organization.

As per claim 15, neither "Semprio" nor Vigoroso expressly discloses negotiating by the service provider with the supplier for the best pricing for volume, but official notice is taken that it is well known for negotiate for the best price. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the service provider to negotiate with the supplier for the best pricing for volume, for the obvious advantage of paying less to obtain the desired products.

As per claim 16, "Semprio" discloses multiple suppliers suited for supplying various needs of customers (especially the paragraph beginning, "Customers can buy goods and services"), implying that the suppliers have been located based on the assembled needs of the customers.

As per claim 17, "Semprio" does not disclose withholding the name of the supplier from the customer, but official notice is taken that it is well known to withhold the names of suppliers from customers. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to withhold the name of the supplier from the customer for the obvious advantage of

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preventing the customer from easily buying products directly from the supplier, depriving the service provider of the profits made as a middleman.

As per claim 18, "Semprio" discloses ordering the customer orders from the suppliers, with no indication of the service provider maintaining an inventory (whole article); Vigoroso teaches ordering the customer orders from the suppliers, and delivering the products to the customers, with no indication of the service provider maintaining an inventory (three paragraphs beginning from, "CC culls numerous orders"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the process to be inventory free to the service provider, for the obvious advantage of the service provider not having the expense of maintaining a warehouse and inventory therein.

As per claim 19, "Semprio" discloses e-commerce by computer controlled electronic communication (whole article). "Semprio" does not specifically disclose that steps E, F, and G are performed by computer controlled electronic communication, but official notice is taken that it is well known for processing orders, ordering products from suppliers, and making payments to be done by computer controlled electronic communication (e.g., over the Internet). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for these steps to be done by computer controlled electronic communication, for the obvious advantages of not having to hire human beings to carry out these steps by hand, or the put up with the delays of transmitting orders and payments through the postal system, etc.

As per claim 20, "Semprio" does not disclose that the service provider solely sets the prices, but official notice is taken that it is well known for middlemen offering products to solely set the prices. Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the service provider to solely set the prices, for the obvious advantage of setting prices at a level expected to optimize the service provider's profits.

As per claim 21, neither "Semprio" nor Vigoroso teaches that the step (G), paying the supplier for the customer orders, is performed after (D) receiving orders from the customers, but before (E) combining the customer orders to a consolidated order for the supplier. However, in accordance with *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946), selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results, and there is no indication that paying the supplier for the customer orders before combining the customer orders to a consolidated order for the supplier achieves any new or unexpected results. Hence, it is held to be a trivial and obvious variation on the teachings of "Semprio" and Vigoroso.

As per claim 22, "Semprio" disclose the service provider providing customer service by which customers can fulfill their desires for various products and services (whole article).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Semprio," Vigoroso, and official notice as applied to claim 1 above, and further in view of Baljko ("Teledeal Web Site Acts as Buying Collective"). "Semprio" does not disclose that step (D) includes confirming the order, but not only is confirming orders well known

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in general, but Baljko teaches buyers receiving confirmation for their orders while suppliers receive combined orders (see especially the paragraph beginning, "While suppliers receive"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for step (D) to include confirming the order, for the obvious advantage of assuring the customers that their orders have been received, and they need not attempt to purchase the goods elsewhere.

Claims 6, 8, 10, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Semprio," Vigoroso, and official notice as applied to claim 1 above, and further in view of Wong (U.S. Patent Application Publication 2002/0087349). As per claim 6, Semprio does not disclose organizing a limited set of customers desirous of purchasing at least some of the goods or services, such customers taken from tenant organizations housed in building structures to purchase from a central source, except in the sense that tenants of Brookfield Properties, and perhaps the tenants of other landlords are limited to much less than the whole population of the world. Wong teaches providing services, including negotiating with vendors for tenants' needs using tenants' aggregated purchasing power, for an organized group of tenants limited to those of a particular service provider (Title; Abstract; Figures 1 and 2A; paragraphs 20-24). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention to organize a limited set of customers desirous of purchasing at least some of the goods or services, such customers taken from tenant organizations housed in building structures to purchase from a central

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source, for the stated advantage of increasing the value of the property to tenants, and thus collecting higher rents.

As per claim 8, Wong teaches that the set of customers is a small closed set ("small" compared to the world, since the set is limited to tenants of a particular property, and "closed" on the same basis); this is taught by the same parts of the Wong disclosure cited in rejecting claim 6 above, and element is obvious on the same grounds cited above.

As per claim 10, "Semprio" does not disclose that the communication is by restricted Internal portal, but official notice is taken that restricted internal portals are well known (e.g., intranets or extranets). The system of Wong, where the provision of services to tenants of a particular property makes the property more valuable to tenants, provides a motive for such a restricted internal portal, as in the rejection of claim 6 above.

As per claim 11, "Semprio" does not disclose that the communication is by restricted Internal portal, the restricted internal portal being restricted to customers located in the building structure, but official notice is taken that restricted internal portals restricted to users in a building are well known (e.g., intranets). The system of Wong, where the provision of services to tenants of a particular property makes the property more valuable to tenants, provides a motive for such a restricted internal portal, as in the rejection of claim 6 above.

As per claim 14, "Semprio" does not disclose that the building structure is a single building, but Wong refers to the building structure as one building (ibid.,

especially paragraph 22, referring to "building 110"). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the building structure to be a single building, as set forth in the rejection of claim 6 above, and also as an obvious consequence of not being readily able to raise the capital to construct or buy more than one building.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Semprio," Vigoroso, and official notice as applied to claim 1 above, and further in view of Wong (U.S. Patent Application Publication 2002/0087349) and Fulton et al. (U.S. Patent 6,182,052). "Semprio" does not disclose that the electronic communication is by restricted Internal portal, but official notice is taken that restricted internal portals are well known (e.g., intranets or extranets). "Semprio" does not disclose that the restricted internal portal has a link invisible to the customers in the building structure, but invisible links are known, as taught, for example, by Fulton (column 6, lines 12-18). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the electronic communication to be by restricted internal portal, as in the rejections of claims 6 and 10 above, and for the restricted internal portal to have an invisible link, for the obvious advantage of preventing the customer from easily buying products directly from the supplier, depriving the service provider of the profits made as a middleman.

Response to Arguments

Applicant's arguments filed December 29, 2006 have been fully considered but they are not persuasive. Applicant has amended claim 12 and the title of the invention, and thereafter argues that claim 21 is supported by the specification. The specification does not provide a clear and explicit description of step G being performed after step D but before step E; however, Applicant maintains that all steps of claim 1 are enabled by the specification, and argues that the step of consolidating orders need not occur before paying the supplier for customer orders. Because claim 21 was filed with the original application, it cannot be denied that Applicant had possession of the claim invention at the time of filing. However, as set forth in the new rejection of claim 21 under 35 U.S.C. 103, selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results, and there is no indication that paying the supplier for the customer orders before combining the customer orders to a consolidated order for the supplier achieves any new or unexpected results. Furthermore, Applicant, in his remarks, asserts that this would have been obvious to one of skill in the art.

With regard to claim 8, Applicant refers to paragraphs [0004] (describing the prior art) and paragraph [0047] of the instant application, arguing that they apprise those skilled in Internet technology and organizational business practices of what is meant by the phrase, "the set of customers is a small closed set." Examiner disagrees, and points out that paragraph [47] apprises those skilled in the art of what is meant by "closed set," viz., the tenants at a single building, but does not define "small." A building

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may have two tenants, or several thousands. If claim 8 were to be issued in a patent, it would not be clear how a large a set of customers a service provider would have to organize and provide services to in order to avoid infringement.

Applicant next addresses the obviousness rejections, alleging that "Semprio" and Vigoroso are extremely vague. Examiner does not find them so. It is true that they do not go into every engineering detail of the systems and methods described, but neither does the instant application, nor do most of the claims recite details of the technology used to accomplish the method steps claimed. It would be difficult to consistently find that "Semprio" and Vigoroso are extremely vague, while maintaining the adequacy of Applicant's own specification.

Applicant argues that "Semprio" does not disclose providing an Internet service provided by the service provider. Examiner replies that "Semprio" clearly does disclose providing services via an Internet web site, which is surely providing an Internet service according to the standard of giving claim language the broadest reasonable interpretation. If Applicant's position is that "Semprio" does not disclose that the service provider is an Internet service provider in the sense of providing access to the Internet (email, websites, Usenet) for its customers client computers, Examiner agrees, but then the problem -- aside from overly broad claim language -- is that Applicant's specification does not show Applicant to have been in possession of the claimed invention at the time of filing.

Applicant argues that it would not have been obvious to combine Vigoroso with "Semprio" because Vigoroso targets the "highly specialized arena" of direct products.

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Examiner replies that Vigoroso's procurement consolidation is broadly applicable and not in conflict with "Semprio's" demand aggregation for helping tenants save money on "a wide variety of business products and services." The wide variety could easily include various highly specialized arenas of particular products.

Applicant's further argues that his invention is not a mere link to a supplier's catalogue, and makes other assertions about what the claimed invention is and is not (first paragraph on page 9). Examiner replies that Vigoroso, in particular, is not a mere link to a supplier's catalogue, either, and that assertions about the claimed invention which do not correspond to actual claim limitations are not reason to allow the claims. Moreover, Examiner is unsure of the intended meaning of "designed to eliminate eminent and require purchasing."

Regarding claim 2, Applicant argues that Applicant's invention fundamentally differs from Baljko in that Baljko describes an online buying service. Examiner replies that Applicant's invention is an online buying service, although of a specialized kind. Applicant cites his own specification as pointing out that prior art, such as Baljko, requires membership fees or commissions paid to the club. Examiner replies that it is more relevant what Baljko herself teaches or does not teach (and in fact, Baljko writes, "Buyers are charged a flat service fee for each transaction"). More centrally, Baljko was not relied upon as anticipating all elements of Applicant's invention, but as teaching that buyers receive confirmations of their orders. There is no conflict between paying fees and receiving order confirmations, nor any reason not to incorporate the teachings of Baljko in a method such as Applicant's. Incidentally, Baljko does disclose an Internet

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service operated by the service provider, in the sense that Shop2gether.com is a website.

Applicant argues against combining Wong with "Semprio" and Vigoroso, on the ground that Wong teaches as a motive that property owners must do more to differentiate their properties in order to attract potential tenants. Examiner finds it somewhat inconsistent that, having argued that Baljko is inapplicable because she describes charging service fees for transactions, Applicant contends that Wong is inapplicable because of teaching that the motive for using tenants' aggregated purchasing power to obtain lower prices is to make the real property more attractive. This raises the question of what motive Applicant would find appropriate and unchallengeable in a prior art reference.

Applicant argues against combining Fulton's patent with "Semprio," Vigoroso, or Wong, on the ground that Fulton's invisible link is in a system for banking and ordering merchandise through a screen-based interactive device combined with a telephone, rather than a personal computer. Examiner does not think the difference is of much significance in context, since a personal computer used for Internet purchasing is a screen-based interactive device which may communicate via modem or DSL over the telephone lines. Thus, Fulton's patent is analogous art, and its teachings concerning invisible links are pertinent to the problems Applicant sought to solve.

The common knowledge or well-known in the art statements in the previous office action are taken to be admitted prior art, because Applicant did not traverse Examiner's taking of official notice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith, can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas D. Rosen
NICHOLAS D. ROSEN
PRIMARY EXAMINER

January 29, 2007